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IN THE

Supreme Court of the United States

October Term, 1966

No. 494

SADIE HAINE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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v.

UNITED STATES OF AMERICA,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above cause on April 1, 1966.

Opinion Below

The opinion and order of the United States Court of Claims, unreported, is set forth in the Appendix, page 1a.

Jurisdiction

The judgment of the Court of Claims was entered on April 1, 1966. Time to file this petition was extended to August 29, 1966, by order of Mr. Justice Stewart, dated June 27, 1966. Jurisdiction of this Court is invoked under Section 1255(1) of the Judicial Code, 62 Stat. 928, 28 U. S. C. § 1255.

Statute Involved

Statute of Limitations for claims against United States, ch. 1263, Sec. 52, 68 Stat. 1246, 28 U. S. C. 2501, reprinted in Appendix A.

Statement of the Case

Petitioner Sadie Haine, a Veteran's Preference eligible, was employed by the Immigration & Naturalizaton Service as a detention officer. On Friday afternoon, June 26, 1959, after receiving an instruction from her superior which she believed unjust and dangerous (to escort a female narcotics user without the assistance of a male detention officer), petitioner submitted her resignation to take effect July 11, 1959. Over the ensuing weekend she reconsidered, and on Monday morning, June 29, 1966, before any action had been taken on her resignation, petitioner filed a written withdrawal of the resignation, stating that it had been based on "emotion rather than reason". No response to the withdrawal was received until July 10, 1959, when petitioner received a telegram from the District Director of the Immigration Service stating that her "resignation" would take effect the following day, July 11, "notwithstanding withdrawal request", and her employment was terminated on July 11, 1959. From that day to this there unfolded a sequence of administrative and judicial activity, summarized below, notwithstanding which the Government contended and the Court of Claims held below that petitioner was guilty of laches which warranted the dismissal of her action for recovery of lost salary less amounts in mitigation.

On July 16, 1959, five days after her discharge, Miss Haine appealed to the Regional Director for the Second U. S. Civil Service Region, who, on July 22, 1959, declined to accept the appeal on the ground that petitioner's termination was voluntary, and was not "adverse action" sub-

ject to appeal, because she had resigned and her resignation could not be effectively withdrawn without the consent of the employing agency. On August 7, 1959, an appeal was taken to the Board of Appeals and Review and was declined on the same grounds, as was petitioner's request to the Civil Service Commission to review the Board's decision. On May 6, 1960, the Commission declined to re-open the matter at petitioner's request, exhausting petitioner's administrative remedies.

On May 10, 1960, petitioner commenced an action in the United States District Court for the Southern District of New York against the Director of the Second United States Civil Service Region for a declaratory judgment that plaintiff's termination was not voluntary and that she was accordingly entitled to a hearing under Section 14 of the Veterans Preference Act, 5 U. S. C. Sec. 863. The action was dismissed on motion of the Government, *Haine* v. *Googe,* 188 F. Supp. 627, on the ground of failure to join indispensible parties, namely, the members of the Civil Service Commission. The dismissal was affirmed by the United States Court of Appeals for the Second Circuit *Haine* v. *Googe,* 289 F. 2d 931 (May 15, 1961). The Civil Service Commissioners being residents of the District of Columbia, the only alternative then open to petitioner in seeking reinstatement was to commence a new action with new counsel in Washington, D. C. Lack of funds (she was then earning $50 per week at full-time employment) discouraged her from doing so immediately.

In October, 1963, after her original counsel advised her that a change in the law had expressly conferred mandamus jurisdiction on the District Court of her residence (Southern District of New York) petitioner commenced a second action there, to compel the Civil Service Commission to hear an appeal from her dismissal.

In early 1964, defendants (Civil Service Commissioners) moved for summary judgment in that action, the motion

having been addressed both to the merits and to a claim of laches in bringing the action. This motion was denied on the ground that there were triable issues of fact.*

On July 9, 1965, petitioner commenced this action in the Court of Claims seeking a money judgment only for loss of salary. Her principal reason for doing so was that she had reached the age of fifty-seven and for the first time had formed doubts as to whether she could accept reinstatement to the arduous position of Detention Officer even if ultimately offered reinstatement after a successful adjudication in the District Court, and an ensuing successful hearing before the Civil Service Commission. If not physically eligible for reinstatement, the mandamus action would have ended in nothing, and the expiration of the Statute would have barred recovery of back pay.

The government moved to dismiss the action upon the ground that a cause of action was not stated; this was based on three alternative grounds, to wit, (a) that another action was pending involving the same subject matter, (b) Statute of Limitations, in that more than six years had expired before the printed petition was filed, and (c) laches. The Court of Claims did not deal with the first two grounds,

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* After the commencement of the instant action, Judge Edward Weinfeld denied a second motion for summary judgment in the District Court action. *Haine* v. *Googe*, 248 F. Supp. 349 (Dec. 14, 1965). Judge Weinfeld denied the defendants' motion for summary judgment and held that petitioner

> "... as a matter of law had the right to withdraw her resignation before it was accepted, and that her request for its destruction rendered it ineffective; that the refusal to give effect to her right to withdraw the resignation constituted agency action which separated her from the Service contrary to her rights under the Veterans' Preference Act." (248 F. Supp., at p. 352).

Judge Weinfeld then ordered a hearing on the single issue of the defendant's claim of plaintiff's laches in commencing the action. but dismissed on the ground of laches as a matter of law.

In connection with its claim of laches, the Government presented no facts to show it had been prejudiced to any degree whatever by the passage of time between the accrual of petitioner's claim and the commencement of this action.

Questions Presented

1. Whether the Court of Claims erred in abridging the explicit six-year Statute of Limitations in barring petitioner's claim, in the absence of any factual demonstration or even any contention that the Government was prejudiced by reason of the passage of time prior to petitioner's commencement of this action.

2. Whether the Court of Claims erred in invoking the doctrine of laches to dismiss petitioner's claim, brought within the six-year Statutory limitation period, notwithstanding her prompt and diligent pursuit of administrative remedies and her constant efforts to obtain a judicial examination on the merits of her claim of wrongful dismissal.

3. Whether the Court of Claims erred in applying the doctrine of laches to bar a claim, based upon statute and not upon equity, by a dismissed Federal employee seeking lost compensation by reason of the wrongful termination of her employment, when petitioner's action was commenced within the six-year limitation period prescribed by statute.

Reasons for Granting the Writ

A. The Importance of the Issue.

In *United States ex rel Arant* v. *Lane*, 249 U. S. 367 (1918), this court upheld the dismissal on the ground of laches of an action by a national park official, seeking reinstatement to his position, notwithstanding the existence of a statutory six-year limitation period which had not ex-

pired. In 1921 the court relied on *Arant* in affirming the dismissal on the ground of laches of companion actions by two Customs Inspectors who had been dismissed for deficient performance of their work. *Nicholas* v. *United States*, 257 U. S. 71; *Norris* v. *United States*, 257 U. S. 77. In *Myers* v. *United States*, 272 U. S. 57 (1926), the court refused to apply *Arant* and reversed a lower court finding of laches in an action seeking restoration of the position of a former postmaster who had been removed from his office by the President of the United States. These are the only cases in which this Court has considered the application of laches to suits by discharged Government employees.

Based on the *Arant* decision, the Court of Claims and the District Courts have dismissed many actions by dismissed Government officials and employees on the ground of laches, among them *Morse* v. *United States*, 59 Ct. Cl. 139 (1924); *Grasse* v. *Snyder*, 192 F. 2d 35 (D. C. Cir 1951); *Jones* v. *Summerfield*, 265 F. 2d 124 (D. C. Cir. 1959), *cert. den.*, 361 U. S. 841; *Chappelle* v. *Sharpe*, 301 F. 2d 506 (D. C. Cir. 1961), *cert. den.*, 370 U. S. 903; *Plunkett* v. *United States*, 58 Ct. Cl. 359 (1923); *Evans* v. *Leedom*, 265 F. 2d 125 (D. C. Cir. 1959), *cert. den.*, 361 U. S. 935; *Miner* v. *United States*, 143 Ct. Cl. 801 (1958); *Zagurski* v. *United States*, 103 Ct. Cl. 755 (1945); *Henry* v. *United States*, 139 Ct. Cl. 362 (1957); *Bailey* v. *United States*, 144 Ct. Cl. 720 (1959); *Bovard* v. *United States*, 160 Ct. Cl. 619 (1963); and *Alpert* v. *United States*, 161 Ct. Cl. 810 (1964).

It is petitioner's contention that, at most, the *Arant* decision warranted dismissals of actions brought within the Statute of Limitations only when two factors conjoined; namely, when the petitioner made little or no effort, by administrative or judicial procedure, to seek relief from his wrongful discharge, and when the Government suffered a demonstrable detriment by reason of the lapse of time caused by the petitioner.

The large number of cases in which lower courts have relied on *Arant* in denying relief to persons claiming to have been wrongfully discharged from Government service suggests that there has evolved an interpretation of *Arant* which, rather than applying a specific and exacting factual obligation upon the Government to show the petitioner's lack of diligence and the plaintiff's injury by reason thereof, has created a body of decisional law and a climate in the lower courts which has gone far effectively to repeal the six-year Statute of Limitations. The Court of Claims, in dismissing the complaint of petitioner, Sadie Haine, in the face of her record of pursuit of administrative and judicial remedies and without any affirmative demonstration of prejudice to the government, misapplied the *Arant* decision and worked a substantial injustice.

This case is of general importance because the lower courts are in need of direction and clear delineation from this Court as to the limits of the application of the equitable doctrine of laches to actions by government employees seeking to demonstrate that they were the victims of illegal government action.

The true meaning and availability of the six year Statute of Limitations is of genuine importance to millions of civil service employees whose only remedy for damages for wrongful discharge is covered by that statute. If the statute has been modified by judicial construction, the precise boundaries of that construction should be drawn by this Court.

B. The Government Should Have the Burden of Factually Demonstrating That It Has Been Prejudiced as a Condition of the Application of the Doctrine of Laches.

In the *Arant* case, this Court applied the doctrine of laches because, *inter alia*, it concluded that manifest inequity would result from reinstating *Arant* after a lapse

of time in that the government service would be disturbed and because two salaries would have been paid for a single service. In *Arant* the government interposed an Answer in which it was alleged as an ultimate fact that the government had been prejudiced and that another person had occupied the position formerly held by *Arant* and had been paid a salary for performing the service. *Arant* demurred to these allegations, thus admitting them, and the issue came to this Court upon the demurrer. The government was therefore not put to the test of its allegations of prejudice and this Court, in language which we contend has been interpreted more broadly than *Arant* required or warranted, stated:

> "When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service may be disturbed as little as possible and that two salaries shall not be paid for a single service.
>
> "Under circumstances which rendered his return to the service impossible, except under the order of a court, the relator did nothing to effectively assert his claim for reinstatement to office for almost two years. Such a long delay must necessarily result in changes in the branch of the service to which he was attached and in such an accumulation of unearned salary that, when unexplained, the manifest inequity which would result from reinstating him renders the application of the doctrine of laches to his case peculiarly appropriate in the interests of justice and sound public policy.
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> • • •
>
> "We agree with the Court of Appeals that it is entirely unnecessary to consider whether the removal of the relator from office was technically justified or not, since by his own conduct he has for-

> feited the right to have the action of the Secretary of the Interior reviewed, and the judgment of that court is therefore affirmed" (249 U. S. at p. 372).

In the instant case the defendant moved to dismiss on the ground of laches without either pleading or factually showing that it had suffered any detriment.

This Court determined it to be reasonable policy to apply the equitable defense of laches to the *Arant* facts and, by inference, authorized its use where warranted in subsequent cases. The equitable doctrine of laches permits the barring of a claim in equity where manifest inequity would result from permitting the claim to be prosecuted. To demonstrate this inequity, a defendant in an equity suit was required to show that the plaintiff had slept on his rights, *i.e.*, had evidenced insufficient interest in vindicating them, and that the defendant had so altered his position as to cause him serious prejudice if the suit were prosecuted. Where a party seeks relief in equity under circumstances in which there exists a similar or analogous remedy at law, the Courts have always applied the Statute of Limitations applicable to the legal remedy, except where the party seeking to avoid the legal limitation period presents an extremely compelling factual basis for avoiding its application.

The consensus of the cases is aptly stated in Corpus Juris Secundum:

> "Mere delay in asserting a right does not of itself bar relief . . . and it has been held that where the statute of limitations has been made applicable in terms, or by analogy, under ordinary circumstances a mere delay of less than the statutory period in bringing a suit in equity does not constitute such laches as will bar relief. However, this rule applies only when time is the only factor, and relief may be denied, although the statutory period has not elapsed, where there has been an unexcusable delay and special circumstances exist which would render

> it inequitable to enforce the right, the burden of showing the existence of such circumstances being on defendant'' (C. J. S. Equity § 131, vol. 30A, p. 90).

In the instant case, where the statutory limitation period is not drawn from analogy, but was in terms legislated by Congress, we do not conceive that this court in *Arant* intended a less stringent standard for the application of laches than that expressed in the above quotation.

The defendant neither pleaded nor presented facts to show any injury to the Government by reason of Sadie Haine's delay in commencing action. The Government relied, and the Court of Claims decision below was based, solely upon the proposition that a significant lapse of time, without more, brings the case within *Arant*, and justifies a dismissal on the ground of laches.

Without definitive statement by this Court on this issue for more than forty years, the lower court decisions have fallen into a pattern which is not only incorrect in large part, but which has created uncertainty and confusion, leaving litigants and lawyers uncertain as to the extent to which the *Arant* doctrine may be used to cut down the six-year limitation period. For example, in some cases, including the instant one, the Court of Claims has upheld the defense of laches solely on a showing of delay in commencement of the action. In others, it has spoken of, and apparently relied on actual demonstration of prejudice to the Government, as in *Alpert* v. *United States*, 161 Ct. Cl. 810 (1964). Their Government counsel annexed to its papers upon a motion for summary judgment an affidavit showing that the position from which the petitioner had been discharged had been filled. The court found prejudice to the Government as a fact in dismissing the action on the

ground of laches. In both *Arant* and *Alpert*, actual prejudice to the Government had been claimed, and found to exist. In the instant case, no such claim was ever made.

To dismiss petitioner's claim in this state of the record is, we submit, an unwarranted extension of the holding of the *Arant* case, unsupported by any decision of this Court.

C. Petitioner's Delay Was Explainable and Excusable. At the Least, She Was Entitled to a Hearing on the Issue.

The long chronology of petitioner's pursuit of a remedy for her wrongful discharge is set forth in the "Statement of the Case," pp. 2-5, *supra*, and in additional detail in petitioner's memorandum in opposition to the Government's motion to dismiss below, which is part of the record certified to this Court in support of this petition. There was no gap in the chain of remedial efforts made by the petitioner from the date she was discharged, July 11, 1959, until May 15, 1961, when the Court of Appeals affirmed the District Court's dismissal of her first action, for a declaratory judgment. Thus, May 15, 1961, was the earliest possible date from which the Government might, albeit erroneously, claim laches. After the affirmance, petitioner's lack of funds with which to obtain new counsel and commence a mandamus action in the District of Columbia, occasioned a pause in her efforts for reinstatement. In October, 1963, the attorney who had represented her in the earlier action, advised her that, by reason of new legislation, a mandamus action could be brought in the District Court of her residence. Such an action was immediately commenced in the Southern District of New York. Two successive summary judgment motions brought by the Government were denied, and on the second motion, District Judge Weinfeld held on the merits that petitioner had indeed been discharged in violation of her right to an administrative hearing on the merits (see footnote, page 4 above).

In July, 1965, petitioner determined to commence this action in the Court of Claims, seeking only a money judgment, because the six-year limitation period of the Statute was soon to expire, and petitioner, then 57 years old, formed serious doubt as to whether health and vigor would permit her to accept reinstatement, even if ultimately offered to her, after an adjudication on the merits in the District Court and a favorable result of the consequent administrative hearing. The Government argued below that the commencement in 1963, and the prosecution since then, of the District Court action are irrelevant to the issue of claimed laches, in bringing this action. We submit the argument is without merit. Laches is an equitable defense, and it is inequitable to suggest to the Court that petitioner failed to pursue her rights during a period when she was actively prosecuting a lawsuit, based upon the same alleged wrong of which the Government obviously had detailed notice and was defending. It is significant that Judge Weinfeld, in the District Court, ordered that a hearing be held on the issue of laches raised by the Government; yet the Court of Claims below declined to order a hearing on what should have been a factual question, notwithstanding it was requested by petitioner, and dismissed the action without having before it any facts upon which to base its decision that petitioner was guilty of laches and equitably disqualified from pursuing her claim. It follows that petitioner has diligently pursued her right to relief from the day of termination of her employment; that at least she was entitled to a factual presentation of the reasons for her delay, if any; and that the doctrine of laches should not be applied to bar her right to recovery in this action.

D. The Doctrine of Laches Should Be Limited in Its Application to Actions by Dismissed Government Employees.

It has been shown that the application of the doctrine of laches to the case of this petitioner was erroneous. We submit further that the application of the doctrine should

be strictly limited to cases where there was either an unquestioned abandonment by the discharged employee of all of his rights to seek relief, or to cases in which the Government has borne the burden historically put upon defendants asserting laches in equity, of a compelling factual demonstration that it will be significantly prejudiced by the prosecution of the action.

In *Myers* v. *United States*, 272 U. S. 52, (1926) the petitioner's action in the District Court for reinstatement to his position as Postmaster was dismissed on the ground of laches, notwithstanding he had promptly informed the appropriate Government agencies of his claims and later commenced an action. Because the substantive issue sought to be raised by Myers in this Court was a serious constitutional issue of the relative powers of the Executive and Legislative Branches, this court invited the late eminent counsel, George Wharton Pepper, to submit a brief as *amicus curiae* for petitioner in support of his petition for a writ of certiorari. In his *amicus* brief, Mr. Pepper commented on the issue of laches as applied to Myers and to discharged Government employees generally. He wrote:

> "As a practical matter, if the decision of the Court of Claims were affirmed, it would mean that while Congress has given dismissed Government officials a right of action if they are wrongfully dismissed, the doctrine of laches has annihilated the right of action so given" (Brief of G. W. Pepper in support of petition for certiorari, Myers v. United States, p. 69).

Fortunately for Myers, this Court reversed the finding of laches as against him. Unfortunately for others in similar circumstances, the body of decisions in the Court of Claims, including the decision below, has proven Mr. Pepper's statement to be prophetic. We earnestly submit that this Court should hear this appeal, to determine whether the doctrine of laches was erroneously applied to Sadie Haine, and to clarify for the Federal Judiciary the extent to which the doctrine of laches should apply in future cases.

Conclusion

Petitioner was wrongfully dismissed from Government service. She had the statutory right to seek the recovery of lost salary and commenced it within the statutory limitation period. Neither by act nor by omission to act has she merited the loss of her day in Court, nor has the Government made a factual showing that it would be seriously prejudiced by her prosecution of this action.

This court should hear her cause and determine for lower courts and litigants the proper application of the doctrine of laches to claims of dismissed Government employees.

WHEREFORE, petitioner prays that a Writ of Certiorari may issue directed to the U. S. Court of Claims and upon remand, that the judgment of said Court of Claims be vacated, reversed and set aside, and that this case be remanded to said court with instructions to proceed further in accordance with the opinion of this court.

Respectfully submitted,

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JACK B. LEVITT,
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APPENDIX

(a) Decision and Order Below

IN THE

UNITED STATES COURT OF CLAIMS

No. 229-65

SADIE HAINE,

v.

THE UNITED STATES.

Before Cowen, Chief Judge, Laramore, Durfee, Davis and Collins, Judges.

ORDER

This case comes before the court on defendant's motion to dismiss plaintiff's petition. Upon consideration thereof, together with the opposition thereto, and without oral argument, it is concluded on the basis of *United States ex rel. Arant* v. *Lane*, 249 U. S. 367 (1919); *Bovard* v. *United States*, 160 Ct. Cl. 619 (1963), *cert. denied* 374 U. S. 830; and *Alpert* v. *United States*, 161 Ct. Cl. 810 (1963), that plaintiff's alleged claim is barred under the doctrine of laches, and,

IT IS ORDERED that defendant's motion to dismiss plaintiff's petition be and the same is granted and plaintiff's petition is dismissed.

BY THE COURT
WILSON COWEN
Chief Judge

(b) Statute of Limitations

"Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues."—as amended Sept. 3, 1954, c. 1263, sec. 52, 63, 68 Stat. 1246, 28 USCA 2501.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 494

SADIE HAINE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Prior to July 11, 1959, petitioner, a veterans-preference eligible, was a career employee in the Immigration and Naturalization Service (Pet. 2). On June 26, 1959, she tendered her resignation from the Service, effective as of July 11, 1959, but then attempted to withdraw it three days later, on June 29 (Pet. 2). The Service declined to accept the withdrawal, and accordingly terminated petitioner's employment on July 11, 1959 (Pet. 2). On July 22, 1959, the Civil Service Commission denied petitioner's request for review of that termination on the ground that the Service was entitled to refuse to give effect to petitioner's withdrawal of her unsolicited resignation (Pet. 2–3).

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In May 1960, after the Commission rejected petitioner's request to reopen, she commenced an action in the United States District Court for the Southern District of New York against the Director of the Second United States Civil Service Region for the purpose of obtaining a declaratory judgment that she had been, in effect, discharged from her employment and was therefore entitled to a Civil Service Commission hearing under Section 14 of the Veterans Preference Act, as amended, 5 U.S.C. 863 (Pet. 3). Her action was dismissed by the district court on the ground that she had failed to join the Civil Service Commissioners—who are indispensible parties—as defendants. *Haine* v. *Googe,* 188 F. Supp. 627; see *Blackmar* v. *Guerre,* 342 U.S. 512. The Court of Appeals for the Second Circuit affirmed in May 1961. *Haine* v. *Googe,* 289 F. 2d 931 (C.A. 2) (Pet. 3).

More than two years later, in October 1963, petitioner commenced a second such action in the district court, this time against the Director and the Civil Service Commissioners.[1] That action is presently pending in the district court, awaiting trial on the issue of her laches. See *Haine* v. *Googe,* 248 F. Supp. 349 (S.D.N.Y.) (Pet. 3–4).

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[1] Section 1 of Pub. L. 87–748, 76 Stat. 744, enacted in October 1962, 28 U.S.C. 1361, vests in the district courts "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." Section 2 of that statute, 28 U.S.C. 1391(e), permits suits against federal officials in the judicial district in which the plaintiff resides.

On July 9, 1965, almost six years after the termination of her employment, petitioner commenced the present action in the Court of Claims seeking approximately $40,000 in damages for loss of pay. Her petition in the Court of Claims alleged, as had her complaint in the second district court action, that "such termination was without the consent and against the wishes of the plaintiff." The United States moved to dismiss on the ground (among others) that petitioner's action was barred by her laches. Petitioner filed an answer to the United States' motion in which she stated, among other things, that after the court of appeals' May 1961 decision "plaintiff and her attorney rested," and that she had failed to commence an action in the Court of Claims after that date because of her counsel's advice that "she could take her time—that she had six years from July 11, 1959, in which to sue for money." The Court of Claims ruled "that [petitioner's] alleged claim is barred under the doctrine of laches" and dismissed her action (Pet. App. 15).

2. Petitioner argues that the Court of Claims erred in dismissing her action for laches, since she had pursued her administrative and judicial remedies and the United States did not demonstrate any specific prejudice to it by reason of her delay (Pet. 7). However, it is well settled that a federal employee who claims that he has been separated unlawfully from his position must "promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service

may be disturbed as little as possible and that two salaries shall not be paid for a single service." *United States ex rel. Arant* v. *Lane,* 249 U.S. 367, 372. Petitioner delayed commencing the instant action for back pay for almost six years, and, as this Court noted in *Arant, supra,* "[s]uch a long delay must necessarily result in changes in the branch of the service to which [she] was attached and in such an accumulation of unearned salary that, when unexplained, the manifest inequity which would result from reinstating [her] renders the application of the doctrine of laches to [her] case peculiarly appropriate in the interests of justice and sound public policy." *Ibid.*

Pursuant to this Court's ruling in *Arant* v. *Lane, supra,* this Court and the lower federal courts have consistently ruled that a government employee's long, unexplained delay in instituting suit in the district court or in the Court of Claims creates a presumption that the United States was harmed by the delay, both in disruption to the civil service and in having to pay two salaries; and that such delay constitutes sufficient ground for barring the action for laches. See *e.g., Nicholas* v. *United States,* 257 U.S. 71; *Benson* v. *Zahner,* 289 F 2d 756 (C.A.D.C.), certiorari denied, 366 U.S. 904; *Bovard* v. *United States,* 160 Ct. Cl. 619, certiorari denied, 374 U.S. 830; *Chiriaco* v. *United States,* 339 F. 2d 588 (C.A. 5). Since petitioner made no attempt to show that she had a legally sufficient reason for her delay of nearly six years in instituting her action, the presumption of harm

was not rebutted and a finding of laches was clearly proper.[2]

It is therefore respectfully submitted that the petition for certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

SEPTEMBER 1966.

[2] We point out also that dismissal of the present action does not constitute a final determination of petitioner's claim against the government since she still has pending a suit in the district court in which she may be able to obtain complete relief. See *Haine* v. *Googe*, 248 F. Supp. 349 (S.D.N.Y.); 5 U.S.C. 652 (b)(2); Back Pay Act of 1966, Pub. L. 89-380, 80 Stat. 94. The only issue remaining in that suit is laches, and since that action was commenced almost three years prior to her Court of Claims suit, the period of delay is shorter and she may be able to persuade the district court that she was not guilty of laches.

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